SBCivil Writ Petition No.735/2005

Lumba Ram Vaishnav
Vs.
State of Rajasthan & Ors.

Date of Order :: 13th September, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. I.R.Choudhary]
Mr. V.S.Choudhary] for the petitioner.
Mr. Shyam Ladrecha, Addl.Govt.Advocate.

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Under a notification dated 28.7.2003 the Director, Secondary Education, Bikaner invited applications from eligible desirous candidates to be considered for appointment to the post of Physical Training Instructor Gr.III in different schools in various districts of State of Rajasthan.

The petitioner in pursuant to the notification referred above submitted an application but the candidature of the petitioner was rejected by treating the qualification possessed by him i.e. of Senior Secondary (Vocational) as not equivalent to Senior Secondary (Academic). The writ petition preferred by the petitioner (SBCWP No.4990/03) giving challenge to rejection of his application came to be allowed with a direction to the respondents to consider his candidature by treating the qualification possessed by him as equivalent to Senior Secondary (Academic) Examination Certificate. The respondents in compliance to the judgment above considered the

candidature of the petitioner but he was not found suitable to be appointed.

Being aggrieved by the same this petition for writ is preferred with a contention that the respondents have not considered the candidature of the petitioner in true spirit of the judgment given by this Court. According to petitioner the respondents have not treated the qualification possessed by him as equivalent to Senior Secondary (Academic) but have given marks for bridge course and that is discriminatory.

It is also pertinent to note that before filing this petition for writ for the cause referred above the petitioner filed a contempt petition before this Court for non compliance of the directions given in SBCWP No.4990/03, but the same was dismissed by order dated 25.8.2004 on the count that the candidature of the petitioner in pursuant to the directions given by this Court was already considered.

A reply to the writ petition has been filed on behalf of the respondents stating therein that provision with regard to obtain marks in compulsory subject of vocational course and marks obtained in optional subject in bridge course was prescribed under a policy. The Senior Secondary (Vocational) in isolation could not be treated to be equivalent to

Senior Secondary (Academic) and hence those who passed Senior Secondary (Vocational) and then did bridge course are only required to be treated to have passed Senior Secondary Examination. It is further stated that the marks obtained in compulsory subjects of Senior Secondary (Vocational) and marks obtained in optional subjects of bridge course were determined to prepare the merit in accordance with circular dated 16.8.2003.

Heard counsel for the parties.

Before coming to merits of this case this Court highly deprecate the tendency of the respondents to reiterate their stand that has already been declared illegal by this Court and affirmed by Hon'ble Supreme Court. The respondents in their reply to the writ petition consistently stated that qualification of Senior Secondary (Vocational) is not equivalent to the qualification of Senior Secondary (Academic) despite the fact that Hon'ble Supreme Court much back in the year 2001 in the case of Sunita Sharma & Ors. v. State of Rajasthan & Ors., reported in JT 2001(10) SC 178, held that Senior Secondary (Vocational) Examination is equivalent to Senior Secondary (Academic) Examination. It appears that the respondents failed to digest the mandate of the Apex Court and, therefore, just out of their frustration reiterated the stand that has been declared illegal.

Coming to merits of this case, the contention of counsel for the petitioner is that there was no need to determine his merit by taking into consideration the marks obtained in bridge course as the qualification possessed by him i.e. of Senior Secondary (Vocational) itself is equivalent to the qualification of Senior Secondary (Academic). As a matter of fact the controversy involved in this petition for writ stands decided by various judgments of this Court reference of some of those are DBCivil Special Appeal (Writ) No.28/05, Pannalal Joshi v. State of Rajasthan & Ors.; DBCivil Special Appeal (Writ) No.DR(J)991/2005, State of Rajasthan & Anr. v. Vinod Kumar; and SBCivil Writ Petition No.5851/2004, Gaurav Sankhala v. State of Rajasthan & Ors. In all the cases above after considering merits this Court directed the respondents to consider the candidature of the person concerned for recruitment to the post of Physical Training Instructor Gr.III ignoring the directions contained in clause(1) of Circular dated 16.8.2003 and by taking into consideration marks obtained by person concerned in Senior Secondary (Vocational). The respondents, therefore, are required to consider candidature of the petitioner by determining his merit by taking into consideration the marks obtained by him in Senior Secondary (Vocational) examination.

In view of the position as above, this petition for writ is allowed. The respondents are directed to consider candidature of the petitioner for the purpose of appointment as Physical Training Instructor Gr.III in pursuant to notification dated 28.7.2003 issued by the Director, Secondary Education, Government of Rajasthan, Bikaner by treating the qualification possessed by the petitioner as equivalent to Senior Secondary Examination and by ignoring clause (1) of Circular dated 16.8.2003. In event the petitioner stands in merit, appointment be given to him as Physical Training Instructor Gr.III. The respondents are saddled with cost of Rs.10,000/- for reiterating the stand that has already been declared illegal by Hon'ble Supreme Court much back in the year 2001.

(GOVIND MATHUR),J.

kkm/ps.